



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

January 29, 2016

Mr. Henry Duong
Asian Town Center
3820 Superior Ave.
Cleveland, OH 44114

Susan R. Strom, Esq.
Calfee, Halter & Griswold, LLP
The Calfee Building
1405 E. 6th Street
Cleveland, OH 44114

**Re: Kichler Lighting, Cleveland
Covenant
Voidance
Voluntary Action Program
Cuyahoga County
218001897007**

**Subject: Notification of Voidance of Covenant Not to Sue Pursuant to Ohio
Revised Code 3746.05 – Kichler Lighting, Cleveland- Cuyahoga
County - NFA # 98NFA022 – TAS Project ID # 218-001897-007**

Dear Mr. Duong and Ms. Strom,

This letter provides you with the results of the Ohio Environmental Protection Agency (Ohio EPA), Voluntary Action Program (VAP), periodic institutional control inspection and deed records review for the Kichler Lighting, Cleveland property (Property) located at 3820 Superior Avenue, Cuyahoga County, Ohio. The Property was issued a Covenant Not to Sue (CNS) by Ohio EPA on August 30, 1999.

This CNS relied upon institutional controls established by a Notice and Deed Restriction recorded with the Cuyahoga County Recorder's Office on August 2, 1999 under Cuyahoga County Record Number (AFN) 199908020391. The use restrictions limit the property to commercial and industrial use only and prohibit the use of ground water. In addition, the Deed Restriction requires the use of engineering controls and a vapor barrier when constructing any buildings for human occupancy in the vicinity of the former plating shop (see Attachment I of the enclosed CNS). The periodic visual inspection findings indicate the Property use as a day care facility does not comply with the commercial/industrial use restriction, resulting in automatic voidance of the CNS pursuant to Ohio Revised Code (ORC) section 3746.05.

The periodic visual inspection was conducted on May 13, 2015 pursuant to ORC section 3746.171, which states, "At least once every five years, the director or an authorized representative of the director shall visually inspect each such property to determine whether the property is being used in compliance with the applicable

institutional controls or activity and use limitations.” This Property is subject to a periodic visual inspection because of the use restrictions relied upon for the CNS.

The property inspection revealed that the Academy of Excellence Child Care Center was located within the boundaries of the Property identified in the CNS. As communicated verbally in May and July of 2015 and in letters dated September 25, 2015 and October 29, 2015, this use is inconsistent with the land use restriction under the CNS. Specifically, Item 1.a. of the Deed Restriction gives a commercial/industrial land use restriction for the Property, which states:

“The property use will remain commercial/industrial such that the potential exposure of children and adults to dermal contact with soils and groundwater, inhalation of vapors and particulates, and ingestion of soil and groundwater are consistent with the exposure scenario described in the Voluntary Action Program Baseline Risk Assessment included as part of the NFA submittal...”

The included Baseline Risk Assessment did not account for an exposure scenario for a child resident living on the Property or for a child visitor on the Property for extended periods of time. The Baseline Risk Assessment evaluated indoor air exposures to a child visitor as a Commercial/Guest Visitor for 117 days per year and two hours per day. In addition, the direct contact with soils exposure pathway was not evaluated for the Commercial/Guest Visitor and was only evaluated for the Commercial/Industrial Worker. The day care facility at the Property provides child care for child visitors for extended times, presumably more than two hours a day or 117 days a year. Therefore, the Property is not in compliance with the land use restriction given under Item 1.a. of the Deed Restriction.

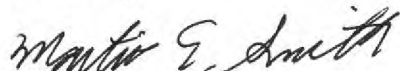
Also, the VAP Rules effective on December 16, 1996 under which the Property is subject, Ohio Administrative Code (OAC) § 3745-300-08((B)(2)(c)(i) define residential land use as follows:

“Residential land use is land use with a high frequency of potential exposure of adults and children to dermal contact with soil, inhalation of vapors and particles from soil and ingestion of soil. The current or intended [use] of the property includes but is not limited to housing, education, or long term health care for adults, children, the elderly, or the infirm, where exposure routes to soil from the property are reasonable anticipated to exist. Examples of residential land uses include, but are not limited to: residences; **day care facilities**; schools, colleges and other educational institutions; nursing homes, elder care and other long-term health care facilities; and correctional facilities (emphasis added).”

Because the CNS and Deed Restriction limit the Property to commercial and industrial use, day care facilities are not consistent with the Baseline Risk Assessment included as part of the NFA submittal (as required by the Deed Restriction), and day care facilities are specifically identified within the OAC as a residential use, the CNS was automatically voided on the day that children began to attend the day care center in September 2011.

If you have any questions concerning this notice, please contact Mark Navarre, with Ohio EPA's Legal Office, at (614) 644-3037 or Mark.Navarre@epa.ohio.gov or me at Martin.Smith@epa.ohio.gov or (614) 644-4829.

Sincerely,



Martin Smith, Manager
Voluntary Action Program
Division of Environmental Response and Revitalization

Enclosure: 1999 Covenant Not to Sue

cc: John Garvey, Partners Environmental

ec: Teri Heer, DERR, NEDO
Rodney Beals, Manager, DERR, NEDO
Peter Whitehouse, Chief, DERR
James Sferra, Asst. Chief, DERR
Jennifer Kurko, Asst. Chief, NEDO
Mark Navarre, Legal, CO
Kelly Kaletsky, Supervisor, DERR, CO
Emily Patchen, Compliance Coordinator, DERR, CO
Michael Settles, Public Interest Center, CO

Ohio EPA Records
records@epa.ohio.gov

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Issuance Date: AUG 30 1999

Effective Date: AUG 30 1999

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In The Matter of:

Kichler Lighting
1571 through 1541 East 38th Street
Cleveland, OH 44114

and

Harold S. & Clare Minoff
7711 E. Pleasant Valley Road
Independence, OH 44131

Regarding the approximately 3.24 acre
property known as
Kichler Lighting
Cuyahoga County, OH

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: Director's Final Findings
: and Orders
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:

: Covenant Not to Sue
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Pursuant to Ohio Revised Code ("ORC") Chapter 3746 and Ohio Administrative Code ("OAC") Chapter 3745-300, the Director of Ohio Environmental Protection Agency ("Director") hereby makes the following findings and issues the following Orders ("Orders").

FINDINGS

1. A complete original No Further Action Letter, No. 98NFA022 ("NFA Letter") was submitted to Ohio EPA, Division of Emergency and Remedial Response, on behalf of Harold S. & Clare Minoff (the **Volunteer**) and Kichler Lighting, on February 18, 1998, by John T. Garvey, with EDP Consultants, Inc., a certified professional ("Certified Professional No. CP118" or "the Certified Professional"), as defined in ORC Chapter 3746.01(E). An addendum to the NFA Letter responding to Ohio EPA concerns was submitted on May 26, 1999. The Property in question is located at 1517 through 1541 East 38th Street, City of Cleveland, Cuyahoga County, Ohio.
2. The NFA Letter and the addendum (collectively, "the NFA") describe investigational and/or remedial activities undertaken at the site known as Kichler Lighting ("the **Property**"), encompassing 3.24 acres. The property has the following permanent parcel numbers: 102-3-001, 002, 035, 036, 037, 038, 040, and 041, in the city of Cleveland. This property is recorded in Volume 86-5936 of the Cuyahoga County

Deed Records. A copy of the legal description and parcel map is contained in Attachment 1 of the NFA addendum. ENTERED DIRECTOR'S JOURNAL

3. The investigational and/or remedial activities undertaken by the Volunteer at the Property include a Phase I and Phase II Property Assessment, conducted in accordance with ORC Chapter 3746 and OAC Rule 3745-300-06 "Phase I Property Assessment" and OAC Rule 3745-300-07 "Phase II Property Assessment." The NFA relies on a Risk Assessment, as required by OAC Rule 3745-300-09. The investigational and/or remedial activities undertaken by the Volunteer at the Property include:
 - (a) investigation of soils and ground water conducted in two identified areas (the PCE fill line and the area of the former machine shop), as defined by the Certified Professional, to assess environmental conditions related to potential releases of hazardous substances and petroleum;
 - (b) exposure pathway assessment identifying which complete exposure pathways exist at the Property, and determining the applicable standards at the Property;
 - (c) soil sampling to demonstrate compliance with the direct contact soil standards within a point of compliance at zero to two feet (0'-2') below ground surface with the primary chemicals of concern being metals, specifically, lead;
 - (d) placement of a ground water use deed restriction on the Property, to prevent exposures to contaminated ground water by extraction of the ground water for purposes described in the deed restriction;
 - (e) placement of a deed restriction on the Property which limits the use of the land to commercial or industrial uses;
4. Based upon the information contained in the NFA, the Certified Professional has concluded that the Property meets the applicable requirements contained in ORC Section 3746.04(B)(7)(a)-(e), and OAC Rule 3745-300-13, as listed below:
 - (a) OAC Rule 3745-300-13(E) and ORC Section 3746.04(B)(7)(a): the NFA contains a summary of information required to be submitted by the person undertaking the voluntary action to the Certified Professional;
 - (b) OAC Rule 3745-300-13(E) and ORC Section 3746.04(B)(7)(c): the NFA identifies any potential source(s) of contaminants at the Property; and

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- (c) OAC Rule 3745-300-13(E) and ORC Section 3746.04(B)(7)(d): the NFA identifies other persons who performed work to support the request for the NFA Letter and the nature and scope of work which they performed;
- (d) OAC Rule 3745-300-13(E) and ORC Section 3746.04(B)(7)(e): the NFA Letter includes a list of data, information, records, and documents relied upon by the Certified Professional in preparing the NFA Letter.
5. The Certified Professional has verified that the investigational and/or remedial activities undertaken at the Property comply with the standards established in ORC Chapter 3746. and OAC Rule 3745-300.
 6. A ground water use restriction has been placed on the Property, as provided in the NFA, and, based on the information contained in the NFA, the Property meets the applicable standards for modified commercial/industrial use.
 7. A land use restriction has been placed on the Property, as provided in the NFA Letter, and, based on the information contained in the NFA, the Property meets the applicable standards for modified commercial/industrial use.
 8. GeoAnalytical, Inc. (Certified Laboratory No. CL0008), is the certified laboratory, as defined in ORC Section 3746.01(D) and OAC Rule 3745-300-01(A)(7), whose services were used in support of the NFA.
 9. As provided by the affidavit in the NFA, GeoAnalytical Inc. performed analysis for which they were qualified, pursuant to ORC Chapter 3746 and OAC Rule 3745-300, and which formed the basis for the issuance of the NFA.
 10. Based on the information contained in the NFA, and upon the conditions described herein, the Property meets the applicable standards contained in ORC Chapter 3746 and OAC Chapter 3745-300 for modified commercial/industrial land use, and the issuance of a covenant no to sue for the Property is protective of human health, safety and the environment.

ORDERS

1. Upon the effective date of these Orders, and subject to the conditions outlined below, Ohio EPA hereby releases and covenants not to sue Harold S. & Clare Minoff, Kichler Lighting and its agents, employees, shareholders, officers, directors, successors or assigns, from all civil liability to the State to perform additional investigational and/or remedial activities at the property for the releases of hazardous substances or petroleum addressed identified in the Phase I and Phase II property assessments completed in accordance with ORC Chapter 3746 and OAC Chapter 3745-300..

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2. The NFA and the Covenant provided in these Orders may be transferred to any person by assignment or in conjunction with the acquisition of title to the Property.
3. A summary of the NFA, and a copy of these Findings and Orders, including Attachment 1 hereto, shall be filed in the Cuyahoga County Recorder's Office in the same manner as a deed to the Property, within sixty (60) days of the effective date of these Orders.

CONDITIONS OF AND LIMITATIONS ON THE COVENANT

1. This Covenant shall only apply to the Property described herein and in NFA Letter No. 98NFA022, upon which the investigational and/or remedial activities specified in the NFA were specified.
2. Pursuant to ORC Section 3746.12(B), this Covenant shall remain in effect for as long as the Property to which this Covenant pertains continues to comply with the applicable standards upon which this Covenant is based, as outlined in the above findings.
2. The Voluntary Action Program ("VAP") Baseline Risk Assessment assumes no structures intended for routine human occupancy will exist for the Boundary Survey area identified in paragraph 1) b) of the Notice and Deed Restriction, recorded August 2, 1999 (the "Survey Area"). In addition to the requirements of the Notice and Deed Restriction, the Volunteer, or the current or future owner, if different, shall submit a demonstration to, and receive approval from, Ohio EPA prior to construction of any structures intended for routine human occupancy in the Survey Area. The demonstration shall show that the use of any such structures in the Survey Area complies with the requirements of ORC Chapter 3746 and OAC Rule 3745-300. In the event that engineering controls are used as part of a remedy to render the use of any future structures compliant with VAP standards, an Operation and Maintenance Plan shall be submitted to Ohio EPA, and an Operation and Maintenance Agreement shall be entered, before the use of such structure for routine human occupancy.
4. This Covenant shall not apply to releases of hazardous substances or petroleum:
 - (a) which occur after the submittal of the NFA to Ohio EPA, or
 - (b) on or emanating from the Property which are not described in the NFA, or
 - (c) for which investigational and/or remedial activities were conducted, which were not in compliance with ORC Chapter 3746. or OAC Chapter 3745-300.

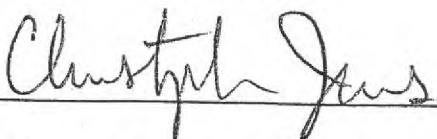
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5. This Covenant shall not apply to:

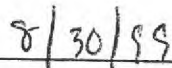
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- (a) claims for natural resource damages the State may have pursuant to Sections 107 or 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. Sections 9607 and 9613, as amended; or
 - (b) claims the State may have pursuant to Section 107 of CERCLA, 42 U.S.C. Section 9607, as amended, for costs other than those for damages to natural resources, provided that the State incurs those other costs as a result of an action by the United States Environmental Protection Agency; or
 - (c) as otherwise specifically provided in ORC Chapter 3746.
6. Nothing in ORC Chapter 3746. limits the authority of the Director to act under ORC Sections 3734.13 and 3734.20 to 3734.23, or to request that a civil action be brought, pursuant to the ORC or common law of the State, to recover the costs incurred by Ohio EPA for investigating or remediating a release or threatened release of hazardous substances or petroleum, at or from a property where a voluntary action is being or has been conducted under ORC Chapter 3746. and the rules adopted thereunder, when the Director determines that the release or threatened release poses an imminent and substantial threat to public health or safety or the environment.
7. Nothing in this Covenant shall be construed to limit or waive the Director's authority to revoke this Covenant in response to any of the circumstances for revocation of a covenant, as provided in ORC Chapter 3746. and OAC Chapter 3745-300.
8. Pursuant to ORC Section 3746.05, any use of the Property that does not comply with the institutional controls identified herein, including the deed restriction, shall void the Covenant on and after the commencement of the noncomplying use.

IT IS SO ORDERED:



Christopher Jones, Director
Ohio Environmental Protection Agency



Date

ATTACHMENT I

CUYAHOGA COUNTY RECORDER

PATRICK J. O'MALLEY

DEED 08/02/1999 01:41:53 PM

199908020391

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NOTICE AND DEED RESTRICTION

Revised July 29, 1999

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The record owners, Harold S. and Clare Minoff, ("Owners") hereby provides public notice and imposes restrictions on real estate depicted on the attached Boundary Survey ("Property") prepared by Neff & Associates and including Permanent Parcel Numbers (PPN) 102-30-001, 002, 035, 036, 037, 038, 039, 040, and 041.

1) Notice is hereby provided that the Ohio Environmental Protection Agency (OEPA) has been provided with a No Further Action (NFA) letter and supporting documentation by a Certified Professional for the Property pursuant to the Voluntary Action Program and Ohio Revised Code (ORC) chapter 3746 and Ohio Administrative Code (OAC) chapter 3745-300. In order for the NFA determination to remain valid, the Owner hereby imposes the following restrictions on the Property:

a) The property use will remain commercial/industrial such that the potential exposure of *children and* adults to dermal contact with soil and groundwater, inhalation of vapors and particulates, and ingestion of soil and groundwater are consistent with the exposure scenario described in the Voluntary Action Program Baseline Risk Assessment included as part of the NFA submittal and, if applicable, as modified pursuant to OEPA comments. *This deed restriction prohibits the use of groundwater for potable purposes and for processing or cleaning of any sort. No wells are to be installed on the site for purposes other than groundwater monitoring or remediation.*

b) The building on PPN 102-30-041 is vacant and will remain so until razed. Furthermore, any future free standing structures intended for human occupancy constructed west of MW-12, between the south line of PPN 102-30-001 and the north line of PPN 102-30-39, will be constructed in a manner, using engineering controls such as a ventilated crawl space or subfloor ventilation and a vapor barrier, that will eliminate the risk associated with indoor exposure to volatile organic vapors that may be emitted from the underlying groundwater and soil. See the attached Boundary Survey that shows the area to which this restriction applies. Pursuant to paragraph 2) below, information will need to be submitted to OEPA showing that the use of engineering controls will maintain the validity of the assumed exposure scenario described in the Voluntary Action Program Baseline Risk Assessment included as part of the NFA submittal and, if applicable, as modified pursuant to OEPA comments. Note that such precautions will not be necessary if the new structure in this area is an addition to the existing main building and its ventilation system is connected to that of the main building.

2) The above restrictions shall run with the land and be binding upon the Owner, its successors, assigns, transferees, or any other owner of the real estate. The above restrictions shall continue in perpetuity, subject to termination or modification as described in paragraph 2) a):

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a) The Owner, its successors, assigns, transferees, or any other owner of the real estate described above may provide sufficient information to the OEPA, in accordance with ORC chapter 3746 and OAC 3745-300, including any applicable fees, to modify or terminate any part or all of the restriction imposed herein based on cause. The petition for modification shall state the specific provision(s) sought to be modified or terminated and shall further include evidence demonstrating that such modification or termination is in accordance with the requirements of the Voluntary Action Program ORC chapter 3746 and OAC chapter 3745-300, and is submitted by an OEPA Certified Professional. The modification or termination of this restriction is not effective without the prior written approval of the director of the OEPA, and until such written approval is recorded in the official records of the Cuyahoga County Recorder's office. The OEPA reserves the right to require a new NFA submittal in the event the modification proposes a substantially different remedy or applicable standard than the original NFA associated with this deed restriction.

3) The Ohio environmental protection agency reserves all legal and equitable rights to enforce compliance with these restrictions.

SIGNATURES :

Owner or Authorized Representative(s)

Harold S. Minoff

Title: OWNER

Date: 8/1/99

Claire Minoff

Title: OWNER

Date: 8/1/99

Witnesses

1) Harold S. Minoff

2) Maria N. Cybulski

STATE OF OHIO)

CUYAHOGA COUNTY)

Before me, a Notary Public in and for said County and State, personally appeared HAROLD S. MINOFF and CLAIRE MINOFF, and acknowledges the execution of the forgoing Notice and Deed Restriction for and on behalf of OWNERS.

Witness my hand and seal this 1st day of AUGUST, 1999.

Harold S. Stern
Notary Public

HAROLD S. STERN, Attorney At Law
Notary Public - State of Ohio
My commission has no expiration date
Section 147.03 B.C.